

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CONSERVATION LAW FOUNDATION, INC.,

and

CHARLES RIVER WATERSHED ASSOCIATION, INC.

Plaintiffs

v.

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY, Regina McCarthy, Administrator

and

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY, REGION 1, H. Curtis Spalding,
Regional Administrator

Defendants

Case No.: 1:16-cv-10397-
RGS

PLAINTIFFS' MOTION TO AMEND COMPLAINT

Plaintiffs Conservation Law Foundation ("CLF") and Charles River Watershed Association ("CRWA") (together, "Plaintiffs") hereby move to amend their First Amended Complaint pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure. Counsel for Defendants has been consulted but has not yet taken a position on the Motion. As grounds thereof, Plaintiffs state as follows:

1. Rule 15(a)(2) allows amendment of pleadings with leave of the court "when justice so requires." Fed. R. Civ. P. 15(a)(2).

2. Plaintiffs' Proposed Amended Complaint is attached to this Motion as **Exhibit 1**. A blackline comparison of Plaintiffs' Proposed Amended Complaint and CLF's First Amended Complaint is attached to this Motion as **Exhibit 2**.

3. In support of this motion, CLF relies upon, adopts, and incorporates by reference its contemporaneously filed Memorandum of Law in Support of Motion to Amend Complaint.

4. Plaintiffs' Proposed Amended Complaint alleges a violation of Defendants' mandatory duty to make a final determination on Plaintiff Conservation Law Foundation's July 10, 2013 petition for designation of waters, including the Charles River, that are impaired by commercial, industrial, and institutional stormwater discharges of phosphorus and other typical stormwater pollutants within 90 days pursuant to 40 C.F.R. § 122.26(f)(5).

5. Plaintiffs move to amend the complaint in specific response to EPA's reference to its letter in response to CLF's petition (Doc. 45-2), the Court's question to EPA at the hearing regarding other avenues by which to require EPA to take action under the residual designation provisions, and EPA's Supplemental Filing (Doc. 45).

6. Specifically, the amended complaint seeks to enforce EPA's mandatory duty requiring that the agency "shall make a final determination on any petition received under this section within 90 days after receiving the petition." 40 C.F.R. § 122.26(f)(5).

7. In violation of this mandatory duty, EPA has not issued a final determination on CLF's petition with regard to stormwater discharges into the Charles River. In fact EPA, stated in its response that it was "neither granting the petition as it is currently framed, nor is it denying the petition." Doc. 45-2 at 2. EPA further failed to issue a final determination with regard to the Charles River specifically. *Id.* at 12-16, 20.

8. Amendment of Plaintiffs' Complaint will not prejudice Defendants nor unduly delay the proceedings in this case. See Memorandum of Law in Support of Motion to Amend Complaint at 4-6.

9. Pursuant to Local Rule 7.1(a)(2), Plaintiffs hereby certify to the Court that counsel for Plaintiffs made a good faith effort to obtain Defendants' concurrence in the relief sought herein. Counsel for Defendants has represented that Defendants have not yet taken a position on the Motion and intend to file a response.

WHEREFORE, for each of these reasons and for the reasons set forth in its Memorandum, Plaintiffs respectfully request that the Court enter an order granting Plaintiffs' Motion to Amend Complaint.

Respectfully submitted,

CONSERVATION LAW
FOUNDATION, INC.

CHARLES RIVER WATERSHED ASSOCIATION

By their attorneys:

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Dated: February 24, 2017

CERTIFICATE OF SERVICE

On this day of February 24, 2017, I hereby certify that these documents filed through the ECF system will be sent electronically to all registered participants in this matter and paper copies will be sent to those indicated as non-registered participants in the matter.

/s/ Caitlin Peale Sloan

Caitlin Peale Sloan

CERTIFICATION PURSUANT TO LOCAL RULE 7.1(a)(2)

I, Christopher M. Kilian, hereby certify I have conferred with Kate R. Bowers, counsel for Defendant, regarding the foregoing motion.

Dated: February 24, 2017

/s/ Christopher M. Kilian

Christopher M. Kilian